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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 78-1706

HOLMES FORESTER CROUCH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HOLMES F. CROUCH
Tax Practitioner
20484 Glen Brae Drive
Saratoga, CA 95070
(408) 867-2628

In Propria Persona

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The petitioner, Holmes Forester Crouch, respectfully prays that a writ of certiorari issue to review the Memorandum opinion of the United States Court of Appeals for the Ninth Circuit, No. 77-1567, filed January 22, 1979.

OPINION BELOW

A verbatim copy of the Memorandum opinion below is attached hereto as Appendix "A".

Although the papers the petitioner filed before the United States Court of Appeals for the Ninth Circuit squarely presented the substantive issues of federal law raised herein, the opinion below has overlooked or misapprehended the following particular points of law or fact:

1. The opinion below has overlooked substance for form. The substance of the Congressional intent of exemptions for self-employeds is embodied in 26 USC 1402(e) for ministers of

religious orders *and* in 1402(g) for members of religious faiths. Petitioner, a Nonsectarian Independent, qualifies as a hybrid of these two sections. He meets the rule of "substantial compliance" with Congressional intent.

2. The opinion below appears unmindful that religious beliefs are personal, moral philosophies which originate from changing circumstances over time. Religious beliefs favored in one period, such as pre-1954, cannot shut out other beliefs formulated post-1954.

3. The opinion below has misapplied its "benevolent neutrality" theory. When a statutory tax exemption has favored only two religious groups (Amish and Mennonite) in more than 25 years of standing, such exemption (via form) violates every spirit of voluntarism and neutrality by government.

4. The opinion below has ignored economic reality in its considerations. As of 1979, the Social Security system is more than $2,000,000,000,000 ($2 trillion) actuarially underfunded. By granting the petitioner's application for exemption on religious grounds, the system would free itself of a $91,333 actuarial liability to the petitioner for a mere $2,419 refund of self-employment tax paid.

5. The opinion below has taken on the telltale exhortations of every socialist utopia: no one must be permitted to escape. The lower Court has admonished the petitioner for his self-reliance and independence from those who govern. The lessons of Peoples Temple, Jonestown, Guyana, are being repeated herein: any attempt to pursue beliefs contrary to compulsion must be punished.

For these reasons and others, the petitioner respectfully suggests that the lower opinion should be given little weight, if any, in resolving the merits of the issues herein.

JURISDICTION

On January 22, 1979 the United States Court of Appeals for the Ninth Circuit entered its Memorandum opinion. Said Memorandum was received by the petitioner on January 26, 1979.

Pursuant to Rule 40, Federal Rules of Appellate Procedure, petitioner filed and served a Petition for Rehearing on February 5, 1979. Said Petition for Rehearing was denied on February 16,

1979. Denial in such short time indicates that the Court of Appeals probably did not even review the Petition for Rehearing. A verbatim copy of the Order denying rehearing is attached hereto as Appendix "B".

The petitioner invokes the jurisdiction of this Court pursuant to Rules 20 and 21(3), Rules of the Supreme Court. More specifically, the petitioner invokes this Court's jurisdiction as per statute 28 USC 1257(3).

QUESTIONS PRESENTED

1. Shall, under no circumstances, a self-employed individual with demonstrated self-reliance and preparation for his own retirement, old-age, and medical care, be allowed exemption from the Social Security tax for his conscientious (religious) opposition to the Social Security system?

2. Will the Social Security system really be undermined and destroyed by allowing one self-reliant, self-employed individual — or hundreds, or even thousands of such individuals — exemption from the Social Security tax to take care of himself (themselves), where such exemption(s) would completely free the system of approximately $100,000 per exemptee in actuarial payouts?

3. Can one, in good faith, formulate conscientious (religious) opposition to the Social Security system and waive its benefits at any time subsequent to 1954 (when the Self-Employment Contributions Act was passed), or must all such formulations for exemption be prior to 1954, and only for members of the two religious groups (Amish and Mennonite) that opposed the Social Security system at that time?

4. Can conscientious (religious) opposition to the Social Security system be formulated by a single individual, a Nonsectarian Independent, with his own program of retirement benefits and medical care, at a level commensurate with the Social Security system, or must only such formulations for exemption be in concert with religious groups "recognized" by the government (Amish and Mennonite) as adequately providing for group members?

5. Does not conformance to the hybrid substance of two statutory exemptions from the self-employment Social Security tax, formulated to meet the only two camps of vocal opposition

in 1954, qualify (for exemption) under the general judicial rule of "substantial compliance" with Congressional intent, in new oppositional situations occurring post-1954?

STATEMENT OF THE CASE

A. Petitioner's Philosophical Background: 1934-1970

The Social Security Act was first enacted in 1934. The political propaganda that preceded the enactment focused on the promise that for every $1 voluntarily "contributed" to the Social Security system, a citizen would receive $35 in protection and security from the Federal Government. Thus, the magic wand of freebies from government was waved before economically desperate citizens who were unemployed by the Great Depression of 1929-1933.

During the years 1932 through 1936, the petitioner was a high-school student of above-average scholastic standing. With his own father unemployed during those years, he was particularly keen on the social promises of financial security by government, in exchange for the sacrifice of fundamental rights and freedoms by desperate citizens. There were many high-school debates and term papers on the subject.

The petitioner remembers well the forewarning of his high-school history teacher who said:

> *"Once the government assumes any financial protection of you, it will enslave you. . . forever."*

Although deeply impressed by these remarks, the petitioner was more impressed, however, when the government seized his two U.S. gold coins (a $5 Liberty and a $20 Double Eagle) and issued him new paper money in its place. He was further impressed — and incensed — when the government declared a "bank holiday" on his approximately $500 in savings which he derived from working on farms and in neighborhoods. When the government allowed the banks to reopen, he could only recover $50 on his savings: 10 cents for every dollar he had earned and saved.

From his high-school days through 1970, the petitioner could find no basis for ever trusting the government of the United States (or any other government).

B. Petitioner's Traumatic Experience of Unemployment at Age 52

Over the years 1936 through October 1970, the petitioner worked for various employers, some of whom were covered by Social Security Act, and some of whom were not. As an employee, he had no choice but to succumb to a portion of his earnings being involuntarily contributed to the Social Security system. These amounts he forfeits entirely herein.

During his employee years, petitioner did complain about taxes in general, and about the tax dictatorship evolving in this country. He complained in writings to his Congressmen, in the publication of a book "How to Fight Taxes," in talks to private groups, and in public debates on radio and television.

Then came November 1970. He was summarily dismissed by his employer for his public expose of tax corruption in local government. Little did he realize that his own employer — Lockheed — was contributing to tax corruption locally, nationally, and internationally. For political reasons, his dismissal was classed as a "layoff." The end effect was the same: at age 52, the petitioner was totally unemployed.

During 16 months of unemployment from November 1970 to his commencement of self-employment in February 1972, the petitioner underwent a truly traumatic experience. He sent out more than 150 resumes detailing his technical experience and educational background (B.S. Marine Engineering, M.S. Nuclear Engineering, Ph.D. Candidate Materials Science). He spent many sleepless nights and bewildering days pondering what has gone wrong in a system where a man of his intelligence and capability could not find gainful employment.

It was during this "over 50" unemployment trauma that the spiritual process of weighing the moral rights and wrongs of our time came into focus. The petitioner sought comfort and solace in some of the conventionally established religions, but he could find none. His only solace was the realization that true security lies within the individual himself. This is something which the government cannot create by mandate; yet, it is something which the government invariably disparages and discredits.

C. **Petitioner's New Spiritual Beliefs Formulated in 1971**

During his trauma of total unemployment, a true spiritual revelation came to the petitioner, namely —

GOVERNMENT IS THE MONSTROUS EVIL OF OUR TIME. GOVERNMENT IS MORALLY EVIL; GOVERNMENT IS FISCALLY EVIL. GOVERNMENT IS EVIL BECAUSE OF THE GREED FOR POWER OF THOSE IN GOVERNMENT AND OF THOSE SPECIAL-INTERESTS BEHIND GOVERNMENT.

Insofar as so-called "social security" is concerned, government is morally evil because it has force-pledged upon all future citizens of this Nation the burden of a system of freebies in which they did not participate for its enactment, nor will they be allowed to participate in its demise.

Government is fiscally evil because of the massive internal and external debt it has forced upon its taxpaying citizens. The fiscal debt is so monumental that, even if no further debt were created, it could never be paid off in the next 200 years. To even make the pretense of doing so, the government would have to concoct some crisis or emergency, to justify stealing monetary assets from its prudent citizens who have saved.

The petitioner believes in the above twin evils of government with the religious fervor and sincerity of any established or recognized religious group.

On numerous occasions, the petitioner sought to align himself with other like-minded individuals, pursuing non-cult type religious faiths. The nearest group to which he could associate was the Universal Life Church, founded in May 1962. This group based its tenets and teachings on that which is right.

In the recorded words of the President of the Universal Life Church, Incorporated —

> *"Every member has a right to his own convictions, a right to express and practice such convictions, so long as he does not violate the equal rights of others. There are no dependent members of the Church, as all members are free and independent to take care of themselves. The Church recognizes every member's belief that is within the bounds of Constitutional Law. This is the doctrine of 'universal life.'*

> *"On matters of old-age, retirement, disability, and medical care, each member has a right to provide for himself and, if self-employed, he has the right to assert his conscientious objection to the compulsory payment of Social Security taxes."*

Although the petitioner sought to associate himself with the Universal Life Church in 1971, he became aware that the Church was under hostile attack by the Internal Revenue Service. Without due process, the Internal Revenue Service revoked the Church's tax-exempt status, assessed a malicious and erroneous tax upon it, and seized all of its financial assets. It was not until April 13, 1976 that, pursuant to a Federal District Court ruling, 372 F. Supp. 770 (1974), the Church's assets were released and its income tax and Social Security tax exempt status were restored.

D. **Petitioner's Formulation of Self-Keogh and Keogh Self-Retirement Plans**

In February 1972, the petitioner was notified that he had passed a 12-hour written tax examination, that his prior three years of income tax returns had been office audited, and that, thereby, he was enrolled (licensed) as a Tax Practitioner before the Internal Revenue Service.

During the years 1972 through 1974, the petitioner did not actively associate himself with the Universal Life Church. Instead, he devoted himself to establishing his self-employment as a professional tax preparer. He concentrated on his professional self-development and on his financial self-reliance. He eliminated all of his debts, and he formulated his own self-Keogh and Keogh self-retirement plans. He paid all applicable taxes and converted all prior liquifiable assets into earmarked forms for self-retirement and medical self-care. By the end of 1974, his set-aside assets were fully comparable in magnitude and manner to the actuarial payout of the Social Security system.

E. **Petitioner's Three Administrative Applications for Exemption Disapproved**

Statute 26 USC 1402(h) defines that an individual — "Shall be deemed to be self-employed on a regular basis in a taxable year. . . if he had net earnings from self-employment. . . of not less than $400 in at least two of the three consecutive taxable

years immediately preceding such taxable year. . ."

The effect of this statute is that the petitioner could not apply for exemption from the Social Security tax until his third year of self-employment. This "third year" on a regular basis became 1974. This third-year eligibility requirement also meant that he would have to pay the social tax for 1972 and 1973, in order to seek exemption from the tax in 1974 and thereafter.

Accordingly, on June 17, 1974 petitioner filed with the Internal Revenue Service, Form 4029: "Application for Exemption from the Self-Employment (Social Security) Tax and Waiver of (Social Security) Benefits." He listed his religious affiliation as NONSECTARIAN INDEPENDENT. He requested refund of his self-employment taxes paid for the years 1972 and 1973. His application was disapproved on July 10, 1974 on the grounds that he did not identify with a *recognized* religious group.

Thereupon, on August 13, 1974 petitioner again filed Form 4029 with the Internal Revenue Service, this time identifying his affiliation with the UNIVERSAL LIFE CHURCH. This second application was disapproved on the grounds that this church was not recognized as a religious group being conscientiously opposed to accepting the benefits of private or public insurance, and that the church had not been in existence at all times since December 31, 1950.

On December 27, 1974 petitioner filed a third Form 4029 claiming exemption from the self-employment Social Security tax. On May 8, 1975 he was notified that his 1974 tax return was selected for audit. He responded to the audit, and, except for the Social Security exemption issue there were no audit changes to his 1974 return. He paid the 1974 Social Security tax and then initiated this action for exemption from, and refund of, his Social Security taxes paid for the years 1972, 1973, and 1974.

F. Petitioner's Papers Termed "Earth-Shaking" by the District Court

Petitioner commenced the action herein on September 25, 1975 by filing a Complaint (in propria persona) in the U. S. District Court for the Northern District of California (San Francisco). He prepared for trial by filing a Trial Brief on May 7, 1976. However, upon joint stipulation, he agreed to file cross-motions for summary judgment. Respective cross-memoranda were filed; petitioner filed a rebuttal memorandum to the

government's position.

The Cross-Motion was ruled on, in favor of the government, by the Court on December 3, 1976. The Court's concluding remarks to the petitioner were—

> *"I have read your papers. I think you have a very interesting and unique approach to the problem, but I think some sort of higher jurisdiction should look at the earth-shaking conclusion that you urge. So I am going to grant the motion for the government for summary judgment and suggest you take it to the Circuit where they may have maybe a broader view."*

G. Petitioner's Oral Argument Before the Ninth Circuit Misconstrued

Petitioner filed his Notice of Appeal from the Order of the District Court on February 11, 1976 and posted bond to pay the government's costs. He filed his Opening Brief on May 26, 1977 citing reliance on Amendments 1 and 9 of the U. S. Constitution. He filed his Reply Brief on July 11, 1977 clearly implying reliance on Amendment 14 by citing an eloquent speech by the government's Chief Counsel:

> *"The Department (of Justice) administers the equal protection clause of the Constitution, and we are the guarantors of due process. This is our duty, our touchstone. . ."*

In both appeal briefs, petitioner cited numerous prior court decisions on the impropriety of discrimination between religious beliefs where tax matters were involved. Yet, the brief prepared by the government's Trial Counsel asserts that "distinctions between taxpayers are valid so long as they are shown to have a rational basis." The rational basis cited was "benevolent neutrality" as per *Waltz v. Tax Commission, 397 U. S. 664 (1970).*

Oral arguments by petitioner and respondent (flown out from Washington, D.C. at taxpayers' expense) were presented to the Ninth Circuit Court of Appeals in San Francisco on January 9, 1979. The petitioner clearly pointed out that only two religious groups — Amish and Mennonite — were favored by individual exemptions from the self-employment Social Security tax.

Although the three-judge court was at all times patient and courteous toward the petitioner, the Court seemed preoccupied.

It misconstrued the petitioner's purpose in seeking exemption, and it misconstrued the benefits to the government.

The Court's Memorandum opinion was filed on January 22, 1979, the substance of which is —

> *"No question of improper discrimination between religious groups is presented by this record. Appellant seeks to withdraw from the Social Security system by establishing that he will neither utilize its benefits nor have any need to do so. Congress has not chosen to grant him that power or to immunize him from the burden of paying taxes to support the system. We have no power to overturn that decision."*

STATUTES INVOLVED

The statutes applicable to this case were enacted by Congress in 1954, known as the "Self-Employment Contributions Act." Two statutes are particularly pertinent, namely —

26 USC 1402(e): Ministers, Members of Religious Orders
Subpara. (1) *Exemption*
. . . reproduced verbatim as Appendix "C".

26 USC 1402(g): Member of Certain Religious Faiths
Subpara. (1) *Exemption*
. . . reproduced verbatim as Appendix "D".

Also pertinent to this case are the following Amendments to the Constitution of the United States, namely —

One. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;"

Nine. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteen. "Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It should be noted that the "due process" clause is found in both the Fifth and Fourteenth Amendments, but that the "equal protection" clause is only in the Fourteenth. Petitioner submits that the Fifth Amendment relates more to criminal matters, whereas the Fourteenth relates more to civil matters.

The issues herein are civil in nature: not criminal. Hence, the Fourteenth Amendment is deemed more fitting.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS A FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT, NAMELY —

Shall a self-employed individual who meets the "hybrid intent" of Congress for exemption from the Social Security tax, as embodied in 26 USC 1402(e) for ministers of religious orders and in 26 USC 1402(g) for members of religious faiths, be granted exemption as a Nonsectarian Independent?

A. No Prior Comparable Case; Underlying Circumstances Herein Vastly Different

In the 25 years of compellability of the Self-Employment Contributions Act, there has never been a federal court case directly comparable to the one herein. The closest situations are seven U. S. Tax Court cases which span the time from May 1969 (the *Palmer* case) through August 1976 (the *Hensen* case). All of the petitioners in those cases were self-employed individuals affiliated with specific religious groups. Some of the groups were in existence prior to 1954 and some came into existence later. All sought exemption from the Social Security tax on the general grounds of Amendment One. To one degree or another, each case pointed out the constitutional inequities of 26 USC 1402(g) — formerly 1402(h).

All of the seven Tax Court rulings — virtually carbon copies of each other — were against the plaintiffs. All of the rulings resorted to the socialistic platitudes of the past, namely: that government has a duty to provide for the general welfare because individuals cannot be relied on to take care of themselves. The petitioner herein vehemently rejects this age-old argument of compulsory socialism. This is a bankrupt nation, morally and fiscally, made so by the very philosophies which the Tax Court decisions extol.

The underlying circumstances herein differ markedly from the seven prior Tax Court cases, as follows:

(1) The petitioner is not affiliated with a specific religious order or religious group; he is a NONSECTARIAN

INDEPENDENT, a form of self-religion.

(2) The petitioner's religious tenets and teachings are directed specifically against the twin-evils of government: its moral evil and its fiscal evil; distrust of government and self-reliance are his guidelines to security.

(3) The petitioner has formulated and set aside after-tax monetary assets for his own retirement and medical care; these assets are more than commensurate with the actuarial benefits of the Social Security system.

(4) The petitioner has pointed out that the government's actuarial liability to him under the Social Security system would by $91,332; this government liability would be eliminated by granting to the petitioner an exemption and refunding to him $2,419 in self-employment taxes paid.

(5) The petitioner formulated his conscientious (religious) opposition to the Social Security system during 1971, in the trauma of total unemployment at the age 52; this type of situation was not envisioned when the Self-Employment Contributions Act was enacted in 1954.

None of the seven prior Tax Court cases touch on the specific circumstances enumerated above. Consequently, this case is truly unusual and unique.

B. **Only Two Self-Employed Religious Camps in 1954; Contemporary Facts Today Differ**

The petitioner understands that the primary role of the Supreme Court, indeed its key role, is to apply constitutional precepts to contemporary facts. He recognizes, of course, that important phrases in the Constitution, such as "due process," "equal protection," "retained rights," and so on, invite differences of opinion among the Nine Justices, when applied to specific current situations. Nevertheless, the Court's key role is to review those Acts of Congress which are transitory in nature. No statute passed by Congress remains forever in concrete. Neither does the Self-Employment Contributions Act of 1954.

In 1954 there were only two religious camps in existence who opposed the Social Security system and sought exemption from compulsory taxes thereto. One camp was identified by Congress as "Ministers, Members of Religious Orders, and Christian Science Practitioners." For this camp, Congress tailored an exemption via statute 26 USC 1402(e)(1). The other oppositional

camp, led by the Amish and Mennonites, was identified by Congress as "Members of Certain Religious Faiths." Congress also tailored an exemption for this camp via statute 26 USC 1402(g)(1). But, surely Congress did not intend to shut out all other religious beliefs of opposition that would come into existence after 1954.

The "substance" of 1402(e) — Ministers, etc. — is that there is no exemption distinction between religious beliefs; that the right of self-care by applicants for exemption is recognized; and that there is no requirement that the applicant waive any benefits of private insurance. See Appendix "C".

The "substance" of 1402(g) — Members, etc. — is that the applicant for exemption not have partaken of any benefits of public insurance; that he participate in alternate group-provisions for his retirement, old-age, and medical care; and that he waive forever any participation in public benefits. See Appendix "D".

Taken together, the substance of the two statutory exemptions for self-employeds boils down to:

(1) Conscientious religious opposition to the receipt of public benefits, and

(2) Alternate self- or group-provisions commensurate with the Social Security system.

Now, suppose contemporary situations arise which fulfill the hybrid requirements of the two exemption statutes. Are they forever shut out because they did not come to the attention of Congress prior to 1954?

If all contemporary situations are forever shut out, would this not lead to the same kind of tyrannical government that invoked the writing of the U.S. Constitution in the first place?

C. **The Uniqueness of This Case: It Meets the "Hybrid Intent" of Congress**

Upon viewing the issues objectively, it appears that the substantive intent of Congress in granting to self-employeds exemptions from the Social Security tax is (1) conscientious religious objection and (2) alternate provisions commensurate with the Social Security system. This substantive intent is not so clearly stated in 1402(e) nor in 1402(g). Whereas 1402(e) requires conscientious religious objection, it does not require alternate provisions. Whereas 1402(g) requires alternate provisions (on a

group basis), it permits conscientious objection only by two religious faiths: Amish and Mennonite. Thus, both statutes have their strong points; both have their weak points.

The obvious rationale of Congress in 1954 was that exemptions be granted in a manner that would not undermine the Social Security system. This meant that the exemptee should not become a burden on the system, once an exemption was granted. The petitioner certainly supports this rationale. But, the petitioner takes the rationale one step further by alleging that he can actually save the Social Security system money: approximately $100,000. At a time when the Social Security funding arrangement is under serious question, the case herein presents an important debt-relief opportunity for government.

The petitioner believes that his case is unique in that, retrospectively, it meets the pre-1954 "hybrid intent" of Congress for exemption. Whether "hybrid intent" of 25-year-old legislation is a valid basis for contemporary exemption from the Social Security tax, only this Court can decide. Such a decision has not been previously made.

II. THIS CASE PRESENTS A FEDERAL QUESTION OF SUBSTANCE, DECIDED BELOW IN A WAY PROBABLY NOT IN ACCORD WITH THIS COURT'S DECISION, NAMELY —

Does "benevolent neutrality" by government really exist where, since 1954, only two religious groups of self-employeds — Amish and Mennonite — have ever been granted exemption from the Social Security tax, via 26 USC 1402(g)(1)?

A. The Walz Case Was Misapplied by the Ninth Circuit; That Case Was Not a Social Security Tax Issue

The Ninth Circuit based its decision entirely upon *Walz v. Tax Commission*, 397 U.S. 664,669 (1970).

In *Walz*, an individual sought to restrain a local government from granting to all religious organizations exemption from the local property tax. In sustaining the exemption, the Court held that the states were free to abstain "from demanding that the church support the state." The Court then went into a rationale of a "neutral course" between the two Religion Clauses of Amendment One. The Court felt that the ideal of benevolent government neutrality is intended simply to prevent the kind of

involvement that would "tip the balance toward government control of churches or governmental restraint on religious practice."

With no disrespect to the Ninth Circuit intended, the petitioner fails to see how the *Walz* case relates to the issues herein. The *Walz* case was a local property tax matter involving a local government. How does the *Walz* rationale apply to Social Security tax exemption by a self-employed Nonsectarian Independent?

Rather, it appears the Ninth Circuit chose the buzz phrase "benevolent neutrality" simply as an expedient for denying the petitioner his request for exemption.

In his opening brief to the Ninth Circuit, page 7 thereof, petitioner specifically called to the Court's attention the fact that only two religious groups (Amish and Mennonite) had ever qualified for the exemption via 26 USC 1402(g)(1). These two groups were "in existence at all times since December 31, 1950."

Why did not the Ninth Circuit base its decision on a rationale of the justification for only two groups receiving exemption? What does a local property tax exemption for all religious groups have to do with Social Security tax exemptions for individual members of exclusively two groups in existence since 1950?

In all sincerity, petitioner believes that the Ninth Circuit's *Walz* citation is a miscarriage of justice. Therefore, petitioner feels that the Supreme Court probably would provide some other, more directly related rationale for its decision on the requested exemption herein.

B. The Respondent Misdirected the Ninth Circuit: That If the Petitioner Were Exempted, the Entire Social Security System Would Be Undermined.

The petitioner is appalled that the government's counsel, who himself is an exemptee from the Social Security system, would advance the frivolous argument that if the petitioner were exempted, the entire Social Security system would be undermined. The government's counsel advanced this argument in his written brief as well as in his oral argument before the Ninth Circuit.

The government counsel's retirement benefits, medicare, and extensive vacations are paid from general income tax revenues

contributed involuntarily by taxpayers, including the petitioner. Altogether, there are about 15,000,000 (15 million) government exemptees: 3 million federal and 12 million state/local. In contrast, there are only about 40,000 (40 thousand) self-employed exemptees: 24 thousand via 1402(e) and 16 thousand via 1402(g). Surely, one more exemptee will not have the devastating effect that the government counsel argues.

Altogether, there are less than 3 million self-employeds contributing to the Social Security system. Their total compulsory contribution amounts to only 3% of the Social Security (so-called) "Trust Fund." Therefore, how could one more self-employed exemptee possibly undermine a system which is funded predominantly by approximately 107 million employers and employees? Would not the system be more fiscally sound if the 15 million government exemptees were included?

An attempt was made by the petitioner to bring these and other pertinent statistics to the attention of the Ninth Circuit. Nevertheless, the Court was more moved by the government counsel, who offered no statistics whatsoever. Making a decision as the Ninth Circuit did without facts, probably is not the way the Higher Court would do.

C. Tax Distinctions Within a Class Are Circumscribed Where Antecedent Rights Are Concerned

The Ninth Circuit did not adequately take into account the impropriety of religious distinctions on tax matters involving self-employeds. Here, again, the Court was more moved by the government's argument that —

> *"It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions."*

And the government cited numerous ancient rulings on this point. What the judicial wisdom of time really conveys is that there can be tax distinctions *between* classes, but not within classes. Furthermore, the distinctions must be limited to occupations and employment: not to distinctions in constitutional rights.

The most straightforward expression of seasoned judicial intent concerning tax distinction between classes is *Escofil v. Commissioner IRS*, 376 F. Supp. 521 (1974). In this case, the Court held that —

> *". . . (T)here is no doubt that Congress has wide latitude to enact Social Security laws which subject employees and self-employed persons to different treatment. . . .*
>
> *". . . Where the distinction between self-employed and employees is drawn in a context involving fundamental rights such as the free exercise of religion, Congress' latitude to legislate is circumscribed. The government has the burden of showing some greater justification for its legislative scheme than otherwise would be required."*

Bear in mind that the *Escofil* Court did not limit its circumscription of Congress' latitude to the free exercise of religion. It merely cited this as a "such as" example. This circumscription applies to *all* fundamental or antecedent rights of individuals, such as Amendments Nine and Fourteen, among others.

In the particular petitioner's case herein, the Ninth Circuit should have insisted that the government show some more compelling reason for denying the requested exemption. Such expectation by the petitioner derives from *Roe v. Wade*, 93 S. Ct. 705 (1973), wherein the Court held that —

> *"Where certain fundamental rights are involved, regulations limiting these rights may be justified only by a compelling state interest and the legislative enactment must be narrowly drawn to express only legitimate state interests at stake."*

In the real world, the only legitimate state interest is that the petitioner never become a retirement or medicare liability on the public. The petitioner already has taken all precautions to guarantee to the state that he will never become such liability. What, then, is the "compelling reason" for shoving the Social Security tax down his throat? Surely, the High Court would probably have approached its decision with some truly compelling government need in mind.

III. THIS CASE PRESENTS A FEDERAL QUESTION OF SUBSTANCE REQUIRING THIS COURT'S INTERPRETIVE VIEWS ON A NATIONAL SOCIAL PHILOSOPHY, NAMELY —

Shall demonstrated "self-reliance" as an alternate

basis for one's old-age, retirement, and medical care be destroyed as a constitutional right of self-employed individuals who conscientiously oppose a compulsory Social Security system which they believe is morally and fiscally bankrupt?

A. **The United States Is At a Cross-Roads of Crises: Freedom vs. Dictatorship**

The United States government today has become so big, so powerful, and so tyrannical that, instead of being the protector of individual freedoms, it is the unchallenged destroyer of those freedoms. Government dictates to individuals every phase of their life, from the moment of birth to the finality of their death. In the process, all natural incentives for self-reliance and self-care are brutally quashed.

There is indeed deep-rooted anxiety and concern that our Nation is at the cross-roads of crises. There is a gathering storm of monetary crisis, energy crisis, productivity crisis, pension crisis, and confidence crisis. Any one of these crises can become the trigger mechanism for stamping out all freedoms, and ushering in total dictatorship.

This is not to say that if the High Court takes no interest in the issues herein, dictatorship will prevail. No, this case is not that important.

What this case does represent, however, is opportunity for the High Court to experess its views on an alternative to a Social Security system which is increasingly under attack. The Social Security system is floundering, morally and fiscally. Surely, the High Court is not immune from expressing its views on serious alternatives.

Petitioner is seeking to unburden the Social Security system by freeing it of an actuarial liability of $91,333. This could be done by refunding a mere $2,419 in self-employment taxes already paid. Thereafter, the petitioner would be fully responsible for taking care of himself. There would be no further cost whatsoever to the government. By this approach, is there not merit in strengthening a social system by relieving it of a liability some 37 times the compulsory tax paid?

The petitioner is now 60 years old. In a few more years, he could be collecting maximum Social Security benefits. Even if he voluntarily or involuntarily paid his unpaid self-employment

tax for the years 1975 through 1979, he would still receive in payout benefits approximately $15 for each dollar he paid in. The younger citizens of this Nation, and those yet unborn for generations to come, would have to make up the large monetary discrepancy. Are such unfortunate citizens really free?

B. **The True Test of Freedom: The Right to Avert the Compulsion of Government on Matters Which Individuals Can Do For Themselves.**

On November 17, 1978 the world witnessed a damaging exposure of the hypocrisy of constitutional freedoms. Such was the horrifying saga of Peoples Temple, Jonestown; Guyana. Some 912 U. S. citizens engaged in mass suicide-murder. All were members of a religious sect accommodated by the "benevolent neutrality" of U. S. tax laws. They were in a commune of their own socialist utopia.

The Peoples Temple episode dramatizes the one telltale condition of every social security system. No one must be permitted to escape. Any attempt to be free from the compulsion of those who govern must be punished.

With sadness and grief, not so much for himself, but for the alarming deterioration of our constitutional freedoms, petitioner views the Ninth Circuit's Memorandum as another variant in the lessons taught by Peoples Temple. Although perhaps not intentional, the Court's wording strikes perilously close to the exhortations of Peoples Temple leaders against those who sought to withdraw to pursue other beliefs on their own.

Petitioner submits that prior courts have taken a different view of the true test of freedom, in contrast to the view of the Ninth Circuit herein. For example, in *Leiby v. City of Manchester*, 33 F. Supp. 842 (1940), the Court held that:

> *"Religious belief cannot be restrained by any law of Congress except when considered in connection with the rights and privileges of others in a well-organized society of free people. Freedom to differ is not limited to things that do not matter much, but the test of its substance is the right to differ as to things which touch the heart of the existing order."*

Petitioner suspects that "the heart of the existing order" today is compulsory socialism. If this is so, then indeed the petitioner seeks specific confirmation of this fact from the High Court. Otherwise, petitioner seeks exemption from the self-employment Social Security tax, as per his rights under Amendments One, Nine, and Fourteen.

CONCLUSION

For the reasons stated above, a Writ of Certiorari should issue to review the Memorandum opinion of the United Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Dated: 5 May 1979 Holmes F. Crouch

HOLMES F. CROUCH
Petitioner
(In Propria Persona)

Appendix "A"

FILED
JAN 22 1979
EMIL E. MELEL, JR. CLERK
U. S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HOLMES F. CROUCH,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,
Defendant-Appellee.

NO. 77-1567

MEMORANDUM

Appeal From the United States District Court
for the Northern District of California

Before: CHOY and SNEED, Circuit Judges, and KERR,* District Judge.

Appellant seeks a refund of $2,419.10 in federal self-employment taxes he paid with respect to the taxable years of 1972, 1973 and 1974. He also sought a declaratory judgment seeking to have Section 1402(h) of the Internal Revenue Code declared unconstitutional, in whole or in part, primarily on First Amendment grounds. The United States moved for summary judgment in favor of the United States. We affirm.

Appellant recognizes that he is not entitled to a refund if his constitutional attack on Section 1402(h) fails in its entirety. We hold that it does so fail. Section 1402(h) reflects an effort to accommodate the necessities of the Social Security system to the structure, beliefs, and practices of certain religious groups. To do so contravenes neither the Establishment Clause nor the Free Exercise Clause of the First Amendment. Rather it constitutes "a benevolent neutrality which will permit religious exercise to exist without interference." *Walz v. Tax Commission*, 397 U.S. 664, 669 (1970). No question of improper discrimination between religious groups is presented by this record.

*Hon. Ewing T. Kerr, Senior United States District Judge for the District of Wyoming, sitting by designation.

Appellant seeks to withdraw from the Social Security system by establishing that he will neither utilize its benefits nor have any need to do so. Congress has not chosen to grant him that power or to immunize him from the burden of paying taxes to support the system. We have no power to overturn that decision.

AFFIRMED.

FILED
FEB 16 1979
EMIL E. MELFI, JR. CLERK
U. S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HOLMES F. CROUCH,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,
Defendant-Appellee.

NO. 77-1567

ORDER

Before: CHOY and SNEED, Circuit Judges, and KERR,* District Judge.

Petition for Rehearing is DENIED.

*Hon. Ewing T. Kerr, Senior United States District Judge for the District of Wyoming, sitting by designation.

26 USC 1402 (e). **Ministers, members of religious orders, and Christian Science practitioners.**

(1) Exemption. Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act), shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

26 USC 1402(g). Members of certain religious faiths.

(1) Exemption. Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by —

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and (B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person, and only if the Secretary of Health, Education, and Welfare finds that —

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in sub-paragraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

Supreme Court, U. S.
FILED
JUN 27 1979
MICHAEL RODAK, JR., CLERK

No. 78-1706

In the Supreme Court of the United States

OCTOBER TERM, 1978

HOLMES FORESTER CROUCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1706

HOLMES FORESTER CROUCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks review of the decision below that he was not entitled to a religious exemption from the tax on income from self-employment under Section 1402(h) of the Internal Revenue Code of 1954.

The pertinent facts are as follows: Petitioner has been self-employed as a tax practitioner since 1972 (I-R. 62)[1] and in that capacity earned income from self-employment within the meaning of Section 1402(b) of the Code. In his application for exemption from the payment of $2,419.10 in self-employment taxes imposed on that income for 1972-1974 (I-R. 62-63, 66), petitioner claimed an exemption under Section 1402(h). That provision permits an exemption from self-employment taxes for individuals who, pursuant to the established tenets or teachings of a religious sect of which they are a member, are conscien-

[1] "I-R." and "II-R." references are to volumes one and two of the record in the court of appeals.

tiously opposed to the acceptance of benefits of any private or public insurance (including social security) which makes payments in the event of death, disability, old age, retirement, or which provides benefits for medical care. In order to qualify for this exemption, the religious sect in question must have been in existence since 1950 (the year the social security system was extended[2] to self-employed persons), and the sect must have had an established practice of reasonably providing for its dependent members.

Petitioner is not a member of a religious sect that meets the qualifications of Section 1402(h).[3] Nevertheless, he claimed an exemption under that provision on the basis of his conscientious opposition to the social security system and his asserted ability to provide for his own old age and retirement needs. On audit, the Commissioner of Internal Revenue denied petitioner's applications for exemption on the ground that petitioner did not meet the requirements of Section 1402(h). Petitioner thereafter paid the self-employment taxes for which he sought exemption and

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[2]Section 208(a) of the Social Security Act Amendments of 1950, ch. 809, 64 Stat. 540, added Sections 480 through 482 to the Internal Revenue Code of 1939, imposing a tax on self-employment income.

[3]Petitioner's exemption application for 1972 listed his religious affiliation as "Nonsectarian-Independent" (I-R. 6). His subsequent applications listed a religious affiliation with the "Universal Life Church" (I-R. 8, 92). The Universal Life Church, incorporated on May 2, 1962, has no traditional doctrine and gives each member the right to his own convictions and a right to express and practice them. It recognizes everyone's beliefs and practices as long as they do not infringe on the rights of others. The Church has no established tenets or teachings with respect to public or private insurance providing for old age, disability, retirement or medical care, and it makes no provisions for such benefits for its members (I-R. 65-66).

brought a suit for refund in the United States District Court for the Northern District of California, claiming that Section 1402(h) violated the First and Fifth Amendments. The district court rejected petitioner's challenge (I-R. 139; II-R. 4), and the court of appeals affirmed (Pet. App. A).

1. The decision below correctly held that Section 1402(h) of the Code does not violate the First Amendment. That provision was enacted to accommodate sincere religious beliefs that prevent the acceptance of benefits available under public and private insurance programs. The congressional purpose was neither the advancement nor the inhibition of religion. Indeed, as this Court observed in *Walz* v. *Tax Commission*, 397 U.S. 664, 675 (1970), there is "no genuine nexus between tax exemption and establishment of religion" that is contrary to the Establishment Clause. See *Gillette* v. *United States*, 401 U.S. 437, 454 (1971): " 'Neutrality' in matters of religion is not inconsistent with 'benevolence' by way of exemptions from onerous duties." See also *Selective Draft Law Cases*, 245 U.S. 366 (1918).

Likewise, Section 1402(h) does not violate the Free Exercise Clause. It is well settled that the freedom to exercise one's religious beliefs is subject to legitimate legislative contraints where the legislation serves a sufficient public interest. *Braunfeld* v. *Brown*, 366 U.S. 599 (1961); *Reynolds* v. *United States*, 98 U.S. 145 (1878); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944). Cf. *NLRB* v. *Catholic Bishop of Chicago*, No. 77-752 (Mar. 21, 1979).

Petitioner's complaint with respect to Section 1402(h) is that his ineligibility for a religious exemption requires him to participate in the social security system despite his willingness and asserted ability to provide for his own needs. But the fact that petitioner is required to pay into the social security system constitutes at most an indirect burden on the exercise of his personal religion and does not render the statute unconstitutional. See *Braunfeld* v. *Brown, supra*; see also *Henson* v. *Commissioner*, 66 T.C. 835 (1976); *Palmer* v. *Commissioner*, 52 T.C. 310 (1969).[4]

[4]Moreover, Section 1402(h) does not unconstitutionally discriminate against persons, like petitioner, who fall outside the scope of those narrowly defined provisions. As this Court pointed out in *Brushaber* v. *Union Pac. R.R.*, 240 U.S. 1, 24-25 (1916), the only restriction imposed by the Due Process Clause on the exercise of the taxing power is that the statute not be "so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property * * * or, what is equivalent thereto, * * * so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion." Section 1402(h) does not exempt all persons having religious objections to the social security system, but only members of sects which have both established tenets against private or public insurance and also an established practice of providing for their dependent members. Congress could properly choose to accommodate the religious objections of such sects because practices regarding the care of dependent members made it unnecessary to bring them within the scope of the social security system.

2. Contrary to petitioner's further argument (Pet. 12-13), the fact that Section 1402(h) applies only to sects that have been in existence since 1950 does not invalidate the statute. Confining the exemption to sects that were established prior to the extension of social security coverage to self-employed persons is reasonably related to the purpose of the exemption. As this Court observed in a similar context in *United States* v. *Maryland Savings-Share Ins. Corp.*, 400 U.S. 4, 6-7 (1970), "Congress does not exceed its power to tax nor does it violate the Fifth Amendment when it refuses to exempt from tax newly formed corporations, the multiplication of which might burden otherwise valid federal programs."

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JUNE 1979

DOJ-1979-06